



DEPARTMENT OF DEFENSE  
OFFICE OF THE APPOINTING AUTHORITY  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

APPOINTING AUTHORITY  
FOR MILITARY COMMISSIONS

SEP 20 2005

MEMORANDUM FOR CHIEF CLERK, OFFICE OF MILITARY  
COMMISSIONS

SUBJECT: Duties and Responsibilities of Chief Clerk of Military  
Commissions-Records Proceedings and Allied Papers

- References:
- (a) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
  - (b) Department of Defense Directive 5105.70, "Appointing Authority for Military Commissions" (Feb. 10, 2004)
  - (c) Military Commission Order No. 1, current edition
  - (d) Military Commission Instructions No. 8 and 9, current editions
  - (e) Appointing Authority Regulation No. 2, current edition
  - (f) Appointing Authority Memorandum, June 30, 2005 (Encl)
  - (g) Presiding Officer Memoranda (POM) 4-2, 8, 13, and 14, current editions

This memorandum provides instructions concerning preparation and service of session transcripts, records of Commission trial proceedings, records of Commission proceedings, and allied papers as well as retention of tape recordings of trial sessions.

**Definitions.** Reference (c), paragraph 6(H)(1) provides: "Each Commission shall make a verbatim transcript of its proceedings, apart from all Commission deliberations, and preserve all evidence admitted in the trial (including any sentencing proceedings) of each case brought before it, which shall constitute the record of trial."

A “record of Commission trial proceedings” consists of the record of trial plus additional exhibits to include all Review Exhibits marked by the Presiding Officer (or with his permission,) and prosecution and defense exhibits offered but not admitted.

A “record of Commission proceedings” consists of a record of Commission trial proceedings plus allied papers. Allied papers will be added by the Chief Clerk of Military Commissions (CCMC) in accordance with this memorandum.

**Processing records of Commission proceedings.**

(1) After the Presiding Officer authenticates the record of trial under reference (c), paragraph 6(H)(1), the Presiding Officer will forward the record of Commission trial proceedings to the CCMC, who delivers it to the Appointing Authority.

(2) After the Appointing Authority certifies the record of trial is administratively complete under reference (c), paragraph 6(H)(3), and reference (d), Military Commission Instruction No. 9, paragraph 4(C)(3), the record of Commission proceedings is transmitted to the Review Panel.

(3) Reference (c), paragraph 6(H)(4) and reference (d), Military Commission Instruction No. 9, paragraph 4(C)(3) lists the materials the Review Panel shall consider and has discretion to consider. Additionally, the Review Panel has discretion to consider other allied papers included in the record of Commission proceedings.

During sessions of the Commission, unclassified exhibits shall be maintained by the Commissions Trial Clerk in coordination with the CCMC. When the Commission is not in session, these exhibits shall be maintained by the CCMC. The CCMC and the Commission Trial Clerk shall arrange for copies of any exhibits that the Presiding Officer may need for periods when the Commission is not in session.

The CCMC is authorized to add documents as “allied papers” as it is processed to final action. The CCMC shall file documents in the allied papers based on the guidelines and instructions in this memorandum.

**Required Allied Papers.** Allied papers shall include the promulgating order, the final order, referral documents, charge sheets, documents showing service of records on the parties, any errata submitted

by the parties, authentication documents, memoranda certifying that records are complete, transmittal documents, briefs filed by the parties for consideration by the Commission and Review Panel, the decision of the Review Panel, matters considered by the Appointing Authority in nominating and selecting the Presiding Officer and members of the Commission, transmittal documents, and the President or designee's final decision on the case. Clemency recommendations endorsed to the CCMC by detailed military defense counsel will also be included in the allied papers. The CCMC will also include any objections to the contents of the allied papers submitted by the parties. Documents that are exhibits in the record of trial need not be replicated in the allied papers.

**Optional Allied Papers.** Optional allied papers should illuminate the processing of the case, explain any delays in processing of the charges, provide background information about the detainee, and assist future historical researchers. The CCMC has discretion to include in the allied papers relevant case law or filings in other forum, such as briefs filed or decisions issued by Article III Federal Courts. Allied papers may include records from the Accused's Combatant Status Review Tribunal, Annual Review Board(s), disciplinary records from the detention facility, and criminal investigative files. Allied papers should include important references issued by the Executive Branch of the Federal Government. For example, the allied papers should include references (a) to (g) and other Military Commission Orders, Instructions, Appointing Authority Regulations, and Presiding Officer Memoranda in effect at the time of and after referral of the charges to trial. The allied papers may also include other Department of Defense decisions concerning the processing of military commissions, such as this memoranda, decisions on challenges of commission members, and decisions on interlocutory appeals, if not already included as exhibits to the record of trial. Allied papers should generally not include classified materials.

**Commissions Library.** A copy of pertinent portions of the electronic Commissions Library described in reference (g), POM 14, that are not readily available to the legal community or the public, should be included in the Commissions Library portion of the allied papers. Reported cases, Manuals, law review articles, and other publications that are commonly available need not be part of the allied papers. Internet items, news articles, and other items referred to by the parties during trial sessions or in briefs that are not readily available should be included. The Prosecution, Defense, Commissions Trial Clerk, and Review Panel's designee may recommend such materials for filing in the allied papers. The Presiding

Officer or President of the Review Panel may direct that such matters be filed as part of the allied papers.

**Service on the Parties.** Prior to the Appointing Authority's certification of a record as complete, the CCMC will provide a copy of all allied papers that will be attached to the record of trial to the Defense and Prosecution who will be given ten calendar days to object to inclusion of the allied papers, or to request inclusion of additional allied papers. The CCMC will inform the parties of the materials ultimately included in the allied papers. The CCMC or designee is also authorized to serve documents on the Prosecution and Defense, and to request appellate filings under Military Commission Instruction No. 9.

**Communications from the Parties.** Email that the Prosecution and Defense address to the Appointing Authority concerning the responsibilities outlined in reference (f), this memorandum, and interlocutory questions filed under reference (e), paragraph 8 shall be copy furnished to the Legal Advisor, Office of the Appointing Authority for Military Commissions; Staff Director, Office of Operations and Support, Office of the Appointing Authority for Military Commissions; and the CCMC.

**Format of Records.** The CCMC will ensure that the original and all copies of the transcripts forwarded to the appointing authority after the date of this memorandum meet the standards set forth below:

(1) All transcripts must appear double spaced on one side of 8 ½ by 11-inch letter-size white paper of sufficient weight (for example, 20-lb) that the print on each succeeding page does not show through the page above.

(2) Court reporters will provide the transcript in electronic format to the CCMC in Microsoft Word<sup>TM</sup>. The type font must be "Times New Roman," Font Size 12. Character spacing is "Expanded" by .7 pt.

(3) The lines of the text should be numbered.

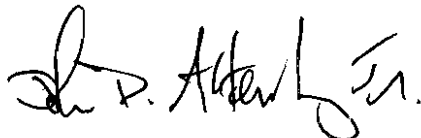
(4) The printing method used must produce a clear, solid, black imprint. The top margin of each page should be 2 inches to permit document fasteners to be used to attach the pages.

**Retention of trial recordings.** The recordings of the original proceedings shall upon authentication of the session concerned be provided to the CCMC for storage. The CCMC will retain trial recordings until

completion of final action by the President or his designee. Thereafter, the recordings will be processed and filed in the National Archives.

**Indexing Records.** The CCMC is authorized to include an index of the transcript, exhibits and allied papers of the record of trial.

Failure to comply with this memorandum shall not create a right to relief for the Accused or any other person.

A handwritten signature in black ink, appearing to read "John D. Altenburg, Jr.", with a stylized flourish at the end.

John D. Altenburg, Jr.  
Appointing Authority  
for Military Commissions

CC  
Department of Defense General Counsel  
Presiding Officer  
Chief Prosecutor and Chief Defense Counsel

Attachment  
As stated



DEPARTMENT OF DEFENSE  
OFFICE OF THE APPOINTING AUTHORITY  
1640 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1640

APPOINTING AUTHORITY FOR  
MILITARY COMMISSIONS

JUN 30 2005

MEMORANDUM FOR CHIEF CLERK, OFFICE OF MILITARY  
COMMISSIONS

SUBJECT: Duties and Responsibilities of Chief Clerk of Military  
Commissions

- References:
- (a) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
  - (b) Department of Defense Directive 5105.70, "Appointing Authority for Military Commissions" (Feb. 10, 2004)
  - (c) Military Commission Order No. 1 (Mar. 21, 2002)
  - (d) Military Commission Instruction No. 8 (Aug. 31, 2004)
  - (e) Military Commission Instruction No. 9 (Dec. 26, 2003)
  - (f) Appointing Authority Regulation No. 2 (Nov. 17, 2004)
  - (g) Presiding Officer Memorandum 2-1 (July 19, 2004)
  - (h) Presiding Officer Memorandum 4-2 (Aug. 12, 2004)
  - (i) Presiding Officer Memorandum 13 (Nov. 22, 2004)

This memorandum describes the responsibilities of the Chief Clerk of Military Commissions (CCMC) at the trial level. The CCMC is responsible for: (1) acting as the custodian of records of trial for military commissions; (2) releasing properly redacted transcripts and exhibits for posting on the Department of Defense Public Affairs (DoD PA) Web site; (3) ensuring adequate preparation of the trial transcript, and that the record of trial is complete; (4) ensuring the professional appearance of the hearing room's interior; (5) designating spectator seating at the commission hearing (see

reference (b), para. 4.1.8); (6) providing translator and security classification services for commission sessions; (7) arranging for handling and storage of all classified documents on behalf of Presiding Officers; (8) sending administrative instructions from Presiding Officers to commission members as required; (9) issuing promulgating orders describing the results of trials; and (10) providing other necessary administrative support to Presiding Officers and/or commissions as directed by the Appointing Authority. The CCMC has discretion to delegate responsibilities to the Deputy CCMC. The first three items require additional explanation.

**Custodian of records of trial.** The CCMC will store original documents, tape recordings of proceedings and transcripts. The CCMC will create such copies as are necessary. Exhibits will not be removed from the hearing room without the permission of the Presiding Officer, and will be stored at the site where the military commission is meeting until the trial is completed. After the trial is terminated, the original documents will be moved to the Office of the CCMC at the letterhead address.

**Releasing transcripts and copies of exhibits for posting on the DoD PA Web site.**

(a) **Generally.** Reference (b), para. 4.1.7 and reference (c), para. 6(B)(3), require that military commission proceedings be open to the maximum extent practicable, and reference (b), para. 4.1.8 mandates “the public release of transcripts.” Reference (c), para. 6(B)(3) authorizes public release of transcripts of open proceedings at the “appropriate time.” The CCMC may act on behalf of the Appointing Authority in the release of transcripts and exhibits for posting on the DoD PA Web site. The CCMC will delay release of information when it will adversely affect the fairness of the proceeding. Sensitive information adversely affecting for example, personal privacy or national security, must be redacted from transcripts and exhibits prior to Web-posting. Information that the Presiding Officer orders protected under reference (c), para. 6(D)(2)(d) and 6(D)(5) will not be released to the public.

(b) **Release of unauthenticated transcripts.** Court reporters will electronically provide unauthenticated transcripts as well as tape recordings of the sessions to the CCMC as soon as practicable (ASAP). The CCMC will provide redacted, unauthenticated transcripts to the parties along with the reason(s) the CCMC redacted information from the unauthenticated transcripts ASAP. The parties will review the unauthenticated transcript, not for completeness or accuracy, but for redaction of sensitive information purposes. If additional redactions are necessary, the parties will provide such redactions

along with their reasons to the CCMC within 24 hours of receipt, or such time as the CCMC shall designate, whichever is later. Failure to meet the deadline established by the CCMC shall constitute waiver of the right to request additional redactions. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting. The parties will not further release redacted or unredacted, unauthenticated transcripts, but may direct requests for information to the DoD PA Web site. The DoD PA Website will prominently display the following disclosure:

The following document is an UNOFFICIAL transcript of a military commission proceeding. The Presiding Officer has not reviewed it, and it may contain spelling, grammar, translation, and/or other errors. Do NOT consider it the official Record of Trial or rely on it for accuracy. Its sole purpose is to disseminate general information. The authenticated transcript of this hearing will be released at this web site after careful comparison with the tape recordings from the proceeding.

(c) **Release of authenticated session transcripts.** The CCMC will provide redacted, authenticated session transcripts to the parties along with the reason(s) the CCMC redacted information from these transcripts ASAP. The parties will review these session transcripts, to ensure redaction of sensitive or protected information. If additional redactions are necessary, the parties will provide such redactions along with their reasons to the CCMC within ten calendar days of receipt. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting. The DoD PA Website will prominently display the following disclosure:

The following document is an OFFICIAL, authenticated session transcript of a military commission record of trial. A description of the matters deleted, and the reasons for such deletions, are attached after the authentication page, which is the last page of the transcript.

(d) **Release of copies of exhibits.** The process for motions filing is described in references (f) and (h). Commission Trial Clerk will provide electronic copies of motions, including attachments if any, to the CCMC ASAP. The CCMC will then redact necessary information and then provide the redacted documents to the parties along with the reason(s) the information was redacted. The parties will review the redacted documents and provide additional redactions or comments if any to the opposing party and to the CCMC. The parties may file additional comments to the same

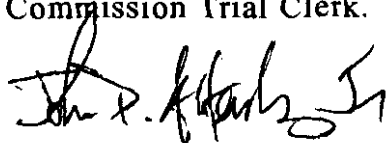


addressees thereafter as they deem appropriate. The CCMC will make other redactions or changes as necessary and provide the redacted documents to the DoD PA for Web-posting after the Presiding Officer cites them at the hearing as a particular review exhibit.

**Authenticating records of trial.** Consistent with reference (c), para. 6(H)(1), and reference (i), Presiding Officers, court reporters, prosecutors and defense counsel will ensure that session transcripts are authenticated as rapidly as practicable after each trial session. Presiding Officers will transmit the authenticated sessions to the CCMC ASAP.

**Relationship of CCMC with Presiding Officers.** The CCMC will report to and work under the supervision of Staff Director, Office of Operations and Support, Office of the Appointing Authority for Military Commissions. The CCMC will not provide advice to Presiding Officers on procedures or other legal matters, but may discuss release of information to DoD PA, coordinate preparation of the record of trial, and discuss resolution of other issues directly related to the responsibilities in paragraph 1 of this memorandum. Until session transcripts are authenticated and delivered to the CCMC, control of, and authority to release, audio files or tape recordings pertaining to those sessions resides with the Presiding Officer even if the CCMC has physical custody of these items. A copy of audio files or tape recordings will be retained at the Office of the Appointing Authority until the session transcripts are authenticated. Requests for access to, or copies of, audio files or tape recordings prior to authentication of session transcripts will be initially directed to the Presiding Officer.

**Relationship of CCMC with Commission Trial Clerk.** The duties of the CCMC referred to Appointing Authority Regulation No. 2, para. 3 (17 Nov. 2004) are assumed by the Commission Trial Clerk.



John D. Altenburg, Jr.  
Appointing Authority  
for Military Commissions

CC  
Chief Prosecutor (COL Swann)  
Chief Defense Counsel (COL Gunn)  
Presiding Officer (COL Brownback)  
Commission Trial Clerk (Mr. Hodges)  
DoD Public Affairs Officer (Major Shavers)